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## TALIAFERRO et al. v. EMERY.

March 13, 1919.

[98 S. E. 627.]

1. **Contracts (§ 99 (3)\*)—Validity—Intoxication—Ratification When Sober.**—In an action for specific performance of a contract made, while defendant was intoxicated, evidence held insufficient to support the finding of the commissioner that the contract was agreed to or ratified by the defendant when sober.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 836.]

2. **Contracts (§ 92\*)—Validity—Intoxication.**—Where plaintiff furnished whiskey to defendant, who was addicted to its use, and after he became drunk secured his signature to a contract more favorable to plaintiff than he had theretofore been able to secure, the contract was voidable, both at law and in equity.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 835.]

Appeal from Circuit Court, Prince William County.

Bill in equity by C. H. Emery against C. D. Taliaferro and another. From a decree for complainant, defendants appeal. Decree reversed, and bill dismissed.

*F. W. Coleman*, of Fredericksburg, *C. E. Nicol*, of Alexandria, and *A. T. Embrey*, of Fredericksburg, for appellants.

*Thos. H. Lion* and *H. Thornton Davies*, both of Manassas, and *Jno. S. Barbour*, of Fairfax, for appellee.

## NEAL v. COMMONWEALTH.

March 13, 1919.

[98 S. E. 629.]

1. **Intoxicating Liquors (§ 224\*)—Criminal Prosecution—Construction of Statute—Presumption.**—Prohibition Act, § 65, making evidence of possession of specified liquor in specified amount "prima facie evidence" of possession for the purpose of sale is simply a rule of evidence, and, like other presumptions, may be rebutted.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 548.]

2. **Intoxicating Liquors (§ 224\*)—Criminal Prosecution—Evidence to Rebut Presumption.**—In prosecution for violating the Prohibition Act, defendant's evidence held to rebut presumption, under section 65, that the liquor found in his possession was for purpose of sale.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 548.]

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\*For other cases see same topic and KEY-NUMBER in all Key Numbered Digests and Indexes.

**3. Intoxicating Liquors (§ 224\*)—Criminal Prosecution—Burden of Proof.**—In prosecution for violation of Prohibition Act, where state merely established prima facie case by proof of liquor in defendant's possession, raising presumption of guilt, under section 65, defendant's evidence, tending to show that such liquor was not for purpose of sale, threw burden of proof upon state to establish defendant's guilt beyond reasonable doubt.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 548.]

**4. Criminal Law (§ 823 (9)\*)—Instruction—Correction.**—In prosecution for violation of Prohibition Act, where state's evidence merely established prima facie case, under section 65, raising presumption that specified liquor in specified amounts found in defendant's possession is for purpose of sale, instruction placing entire burden upon defendant to show his innocence, where the presumption under such statute was overcome by defendant's testimony, was not cured by a subsequent instruction to acquit defendant if state failed to prove him guilty beyond reasonable doubt.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 745.]

**5. Witnesses (§ 382\*)—Impeachment—Evidence.**—In prosecution for violation of prohibition act impeaching testimony of defendant's statement that he had given away some of the liquor found on his premises, where such alleged statement was not shown to have been made by defendant when examined as a witness in his own behalf, was not admissible under Code 1904, § 3901.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 966.]

Error to Circuit Court, Lunenburg County.

Charlie Neal was convicted of violating the Prohibition Act, and he brings error. Reversed and remanded.

*Geo. E. Allen*, of Victoria, for plaintiff in error.

*Attorney General Jno. R. Saunders*, for the Commonwealth.

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BYRD *v.* COMMONWEALTH.

March 13, 1919.

[98 S. E. 632.]

**1. Libel and Slander (§ 144\*)—Abusing Female Relations—Presence of Third Person.**—The offense denounced by Code Supp. 1910, § 3780a, is complete whenever insulting language is spoken to or about another, or about his female relations, in his presence and under circumstances reasonably calculated to provoke a breach of the peace, regardless of presence or absence of third person.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 267.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.